IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5158 OF 2005

Sanjay Balkrishna Sawant ...Applicant
Vs.
The State of Maharashtra ...Respondent

Smt. Kirti Dabir for the Applicant.
Ms S.D. Shinde, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : AUGUST 22, 2005.

P.C.:

1. Heard learned Advocate appearing for the Applicant and the learned A.P.P. for the State. By the order impugned in this Criminal Application, the Application made by the Applicant for discharge has been rejected by the learned Trial Judge.

2. The offence alleged against the Applicant and other co-accused is under sections 302, 109, 120-B, 34 of the Indian Penal Code read with sections 3 and 25 of the Indian Arms Act. The learned Advocate for the Applicant submitted that there is absolutely no material on record to connect the Applicant with the alleged offence. She submitted that there is no statement of the any witness recorded against the Applicant and none of the statements implicate the Applicant. She relied upon the observations made by the learned Additional Sessions Judge while enlarging the Applicant on bail. The learned A.P.P. has placed on record the material against the Applicant and submitted that there is no merit in the Application.

3. I have considered the submissions. Observations made by the learned Additional Sessions Judge while deciding the Application for bail cannot be considered while deciding the Application for discharge. The said observations are obviously made for limited purpose of considering the prayer for the grant of bail.

4. Section 120-B of the Indian Penal Code has been applied by the prosecution. At the stage when the Application for discharge is considered, the court is not suposed to undertake the exercise of sifting the evidence. All that the court is required to see is whether there is any material to proceed against the concerned accused. Considering the material on record, it cannot be said that there is absolutely no case made out against the Applicant. Considering the material on record, the learned Trial Judge was right in holding that no case was made for passing order for discharge. I find no merit in the Application and same is rejected.

JUDGE